UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.253
4 June 1996

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 253rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Croatia

ORGANIZATIONAL AND OTHER MATTERS (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.253/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-16104 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Croatia (CAT/C/16/Add.6; HRI/CORE/1/Add.32)

1. At the invitation of the Chairman, Mr. Nad, Mr. Veić, Mr. Krapac, Mr. Lovrić, Mrs. Meštrović, Mr. Henisberg, Mr. Toljan, Sočanec, Mrs. Ujević, Mrs. Matešić and Mrs. Briški (Croatia) took a seat at the Committee table.

2. Mr. NAD (Croatia) said that, since attaining independence in 1991, the Republic of Croatia had become a party to a number of international instruments, ratified the two Optional Protocols to the International Covenant on Civil and Political Rights and recognized the powers of the Human Rights Committee under article 41 of that Covenant. The establishment of the rule of law throughout the country had been seriously undermined by the Serbian aggression, with all the well-known consequences. After several years of unsuccessful peace discussions, Croatia had had to undertake two military operations as a result of which it had reconquered a large part of the occupied areas. The resultant change in the balance of power had paved the way for an agreement. The Croatian authorities were firmly resolved to prosecute any person guilty of brutal acts on the territory of the Liberated Republic and to protect all citizens, whatever their ethnic origin. Accordingly, the President of the Republic had granted an amnesty to many Serbs. The Croatian authorities were engaged in peacefully integrating the last occupied part of their territory, demilitarizing the zone and ensuring effective protection of human rights. There were, however, still many displaced persons and refugees, and living conditions in the regions devastated by the war were extremely difficult. The Government had taken a number of measures to reconstruct those regions and to restore trust between the peoples. For instance, it would allow Serbs wishing to do so to return and settle in Croatia, where they would enjoy all the rights granted to members of the 15 other minorities living on the territory. Under the agreements which had been concluded, the Croatian authorities were striving for the reintegration of Eastern Slavonia. They appealed to the international community to help them throw light on the fate of thousands of persons who had disappeared in Croatia. They were collaborating with the International Criminal Tribunal for the Former Yugoslavia and were doing everything in their power to ensure that those guilty of criminal acts were brought before the competent judicial bodies. The Republic of Croatia had high hopes that the Committee would help it to restore full enjoyment of the human rights on its territory. His delegation apologized to the Committee for not having sent its report within the prescribed time-limits but trusted that it would bear in mind the country's special situation in recent years.

3. Mr. BURNS (Country Rapporteur), congratulating Croatia on the commitments it had entered into pursuant to various international instruments, noted that it had not entered a reservation with respect to article 20 and that it had made the declarations provided for under articles 21 and 22. In addition, its initial report complied with the requirements as to form laid down by the Committee.

4. It was regrettable that, even though torture was prohibited under the Criminal Code, it was not expressly characterized as a criminal offence, contrary to the criteria laid down under the Convention. In the Committee's view, there was a difference of a moral kind between torture and the other offences and, unless torture had been defined as a separate crime, a State could not supply data on the cases of torture recorded within its territory since such data were amalgamated with figures for assaults in general. Croatia could not therefore properly perform its obligations under articles 3, 5 and 7 of the Convention.

5. With regard to paragraph 11 of the report, he would be grateful for clarification what appeared to be a contradiction. During hostilities, the Croatian Government had not officially proclaimed a state of war or emergency in order to prevent any restriction of human rights and fundamental freedoms (para. 9 of the report); yet the President had enacted decrees that had temporarily restricted the exercise of some fundamental rights and freedoms (para. 11 of the report).

6. The Committee was gratified that the Republic of Croatia, as the successor to the former Federal Socialist Republic of Yugoslavia, considered itself bound by all the international treaties to which the latter had been party and which were in keeping with its Constitution and legal system. International conventions and treaties, when ratified in accordance with the Constitution, had precedence over internal legislation (para. 12 of the report). He would like to know what the ratification procedure under the Constitution consisted of.

7. The hierarchical structure of the Ministry of the Interior included a disciplinary tribunal which dealt with breaches of discipline committed by police officers. What was the composition of that disciplinary tribunal? He would like to know whether he had understood correctly that the Constitutional Court was empowered to receive complaints from citizens who considered that their constitutional rights had been violated. Also, were the military courts composed of judges appointed according to the normal procedure (para. 19 of the report)?

8. With regard to paragraph 22 of the report and the 40 indictments for crimes against humanity and violations of international law to which it referred, he would like to know the number of Serbian, Muslim and Croatian accused, and would also welcome an explanation concerning the habeas corpus-like remedy, instituted under the Administrative Litigation Act and referred to in paragraph 29 of the report. Further, could torturers invoke superior orders and how many of the police officers who had been the subject of disciplinary measures in 1993 and 1994 had committed acts of torture? While the Committee was pleased to note that the Republic of Croatia complied with the principle of the universal applicability of criminal law, in accordance with article 5 of the Convention, it wondered whether the provisions for preliminary detention referred to in paragraph 81 were compatible with those in paragraph 122 (b). Could a suspect be held incommunicado?

9. As all the signatories of the Dayton Framework Agreement were required to cooperate with the International Criminal Tribunal for the Former Yugoslavia, the Committee would like to know how many arrest warrants had been issued against war criminals in Croatia.

10. Mr. SØRENSEN (Alternate Country Rapporteur) said that the Committee was well aware of Croatia's special situation and would endeavour to establish a frank and constructive dialogue with the authorities.

11. During preliminary detention, certain rights provided important guarantees for the suspect. At what point was the arrested person informed of his right to remain silent and was that information communicated to him both orally and in writing? Could that a person use his own language? It would be useful to have information about the conditions for the exercising the right to enjoy the services of a lawyer as well as the right to inform one's relatives of the arrest and to be examined by a doctor of one's choice.

12. With regard to remedies, was it possible to waive the three-day period (para. 104 of the report) within which an injured person had to file a complaint with the public prosecutor's office, if that person was hospitalized and incapable of bringing the complaint in person owing to the ill-treatment suffered. The report contained very detailed information on the prison population and the penitentiary system and its functions, but did not state whether there was any kind of independent prison inspection system. Also, if a detainee's rights were violated, could he, in addition to following the procedure for submitting a complaint to the warden of the prison as referred to in paragraph 54, write under sealed cover to the deputy for his constituency or refer the matter directly to the Ministry of Justice or the Human Rights Committee? If so, the inclusion of a communication to the Committee against Torture should be envisaged as a possible remedy. In the table following paragraph 57, "Chemicals" appeared as one of the instruments of restraint used in jails. It should be specified whether that meant tear-gas. It was not clear whether the health-care services provided in penitentiaries (para. 99) were responsible to the Ministry of Health and not to the Ministry of Justice and whether there was a law or other provision concerning persons who suffered from mental disorders and, if so, whether it also applied to detained persons.

13. While training on the prohibition of torture for members of the police forces was, of course, laudable, it was just as necessary to provide training for penitentiary staff, prosecutors and judges in human rights in general and with special problems of torture in particular. Medical staff, and doctors in particular, should also receive such training, especially to familiarize themselves with the conduct of victims of torture, who after their ordeal were afraid and mistrusted police officers, but also other officials on the prison staff, judges and even doctors. In the absence of specific training for members of all the professions that might come into contact with the victims of torture, the United Nations could perhaps provide technical assistance in that area.

14. Article 14 of the Convention was of paramount importance particularly in the case of a country emerging from a war. A stable and lasting democracy was inconceivable if the victims of brutality were unable to secure compensation.

Paragraph 115 stated that, in the event that an unjustified sentence or term of imprisonment was the subject of reports in the mass media that were damaging to a person's reputation, that person had the right to moral satisfaction in the form of a denial published in the press or some other media. Any abuse of that kind should give rise to moral satisfaction. As to financial compensation, the question was whether it could be granted only on a complaint made by the victim or whether the court could grant it automatically if it established that a police officer was guilty of ill-treatment of the person concerned and, furthermore, whether it was the State or the guilty party that paid the compensation. Medical rehabilitation was also of great importance in a country like Croatia, which had just had a war, and it should be provided by properly trained professionals. As a mark of its wish to ensure such rehabilitation, the Croatian Government should endeavour to make the Centre for the rehabilitation of victims of torture, in Zagreb, better known, ensure that it was working properly, and consider paying a contribution - even a token contribution, given Croatia's current difficulties - to the United Nations Voluntary Fund for Victims of Torture.

15. While the Committee against Torture had no mandate to carry out a detailed study of and express an opinion on matters relating to the liberation of the occupied territories, it was bound to repeat that, in order to ensure a stable democracy, a State must punish those responsible for acts of torture. That rule had again been reaffirmed by the Human Rights Committee at its fifty-second session. The information provided by some NGOs referred to many serious and brutal acts, but the Committee against Torture did not doubt that the Republic of Croatia would prosecute all the guilty parties. It awaited with interest the results of the investigations into those cases, which could be dealt with in the second periodic report.

16. Mr. ZUPANCIC said he noted that the Croatian criminal procedure provided for only a very short period in custody, that was a good thing, since most torture occurred during that time, generally at police stations when the suspect had no contact with the outside world. It would be very useful to know what precisely the constitutional rights enjoyed by defendants and suspects in Croatia were, and in particular whether persons could appeal directly to the Constitutional Court should their rights be violated at the criminal proceedings stage. Again, the Croatian Constitution contained a provision whereby illegally obtained evidence was not admissible. Could the figure of 2 per cent mentioned in a study carried out by Zagreb University on the proportion of cases resulting in violations of those constitutional rights be regarded as realistic? He would also like to know what the method of excluding illegally obtained evidence was and in particular whether police reports drawn up at the time of custody remained on file or whether they were withdrawn before the file was forwarded to the examining magistrate.

17. As to the characterization of torture as a crime, paragraph 14 of the report stated that torture and similar acts were not defined as explicit criminal acts but that a number of acts were dealt with under special provisions. It was encouraging to see that, under those provisions, torture appeared to include mental suffering, in accordance with article 1 of the Convention, though that article was in fact far more precise. Paragraph 21 of

the report listed the sanctions that could be imposed by the criminal courts, but made no reference to capital punishment. If there was no capital punishment in Croatia then that was to be welcomed, and the Committee would like to have confirmation that that was indeed the sense of paragraph 21.

18. Mrs. ILIOPOULOS-STRANGAS, reminding members of the content of article 3 of the Convention and commenting on paragraphs 68, 69 and 71 of the report, which referred to the expulsion of foreign nationals and the refoulement of refugees from Bosnia and Herzegovena, said she would like to know whether the Croatian authorities had made sure that, even if the situation of the persons concerned was irregular, they had not run the risk of being subjected to torture in the country of destination. She would also like to know whether Croatia had adopted legislative provisions to ensure the application of article 3 of the Convention and, in particular, whether there was a law on foreigners consistent with the requirements of that article.

19. Mr. BIKIS said that, generally speaking, the constitutional and legal framework established in Croatia was conducive to ensuring the primacy of the rule of law and the protection of human rights. The establishment of such a framework was not, however, an end in itself. What mattered was effective protection of human rights, particularly the rights set forth in the Convention against Torture, at all times and in all circumstances but particularly at times of crisis. Notwithstanding the extent of the difficulties which had confronted Croatia since 1991, the information provided by certain non-governmental organizations, and by Human Rights Watch and Amnesty International in particular about the very many infringements of the human rights in Croatia was bound to cause concern. Human Rights Watch, in its world report for 1996, stated in particular that the Croatian army offensives against western Slavonia and Krajina in May and August 1995 respectively had resulted in the displacement of thousands of Serbs from Croatia and numerous human rights violations after Croatia had taken over control of those two regions, that violations of civil and political rights continued in Croatia, and that they were in the main attributable to the military. Not to dwell on the various statements in NGO reports, it should be emphasized that they attributed the widespread brutality to the armed forces and the Croatian police and also to persons who cooperated with the army or acted independently (mass executions, serious acts of torture, arson, resorting to rape in ethnic cleansing, confiscation of property, burning down of houses). Croatia's report painted a very different picture and it would therefore be interesting to know whether the Croatian Government was prepared to hold an independent inquiry into the allegations made in the documents in question and report to the Committee on the findings.

20. Mr. REGMI said he too considered that the definition of torture laid down in article 1 of the Convention should be incorporated in the criminal law of States parties, along with the provisions on compensation, and that all acts of torture should constitute offences under criminal law and be punished accordingly. Paragraphs 40 to 42 of the core document (HRI/CORE/1/Add.2) described the composition and functions of the Croatian Constitutional Court. In that connection, he wondered about the respective powers of that Court and the Supreme Court, since the Constitutional Court could apparently supervise

the activity of political parties and ban any party that encouraged or had recourse to violence. Was the Constitutional Court an organ of the Executive or the Judiciary and what actually were its powers so far as the application of the Convention was concerned?

21. Paragraph 123 of the report stated that firearms could be used in extreme and strictly defined cases where there were no other means for dealing with the situation. That did not seem to be consistent with article 16 of the Convention. It would also be useful to know whether there was any law in force in Croatia which stipulated that no act of torture could be justified or excused on the ground of superior orders.

22. Under the terms of article 14 of the Convention, any victim of an act of torture should be able to obtain compensation. In such cases was it only the victim who was authorized to seek compensation or could a third party - for instance, a non-governmental organization - do so on the victim's behalf? What was the maximum amount a victim could claim in compensation?

23. Various reliable sources had reported numerous arbitrary executions of which the government forces in Croatia were apparently guilty. Political assassinations had also been reported as well as brutal acts committed against members of the Serbian minority in Croatia. The Croatian Government must put an end to such human rights violations as quickly as possible and hold inquiries so that the guilty persons could be tried and punished.

24. Mr. CAMARA said that he had learned with much interest of the measures taken by Croatia to ensure the protection of human rights. In his view, it was important to consider not only the negative aspects of the report but also the positive ones. He wished to be associated in Mr. Regmi's question concerning article 2, paragraph 3, of the Convention and would ask whether the notion of aiding and abetting on instructions existed under Croatian criminal law. It should be the concern of States parties to prosecute not only those who committed acts of torture but also those who instigated them and in particular superiors who had given the order to commit such acts.

25. Mr. YAKOVLEV, remarking on the high quality and detail of the Croatian Government's report, said that he would merely echo Mr. Burns' question regarding the presidential decree on the application of criminal procedure in times of war or of the imminent threat of war and the decree on the organization and functioning of the judiciary in wartime. The two decrees appeared to have serious implications and it would be important to know the extent to which they were applied. Having regard in particular to the information received concerning ill-treatment inflicted by the Croatian police in the early stages of custody. Was there any connection between such actions and the exceptions to the exclusionary rule provided for under those decrees? He would also like to know whether the two decrees were permanent or whether they were, in principle, of limited duration.

26. Mr. GONZALEZ POBLETE joined with those members of the Committee who had expressed concern about the application of the exclusionary principle laid down in article 15. Although paragraphs 35 and 119 of the report referred to the question, it would be interesting to know how the exclusionary rule was applied in practice in Croatia. In particular, if a detainee claimed that he

had made a confession under torture, was his complaint examined at the same time as the case for which he was being prosecuted? If the detainee complained to the judge who was investigating the main case, what would that judge do? Would he investigate both cases and, if he found that a confession had indeed been extracted under torture, would he continue the investigation into the main offence or would he dismiss the charge? If, on the other hand, he considered that the allegations of torture were unfounded, could the plaintiff renew his allegations before the court hearing the case for which he was being tried? If so, could the court try both cases simultaneously, bearing in mind the territorial jurisdiction that operated in Croatia in criminal matters, or would the allegations of torture be brought before another court? If the investigation into the allegations of torture took time, would the proceedings relating to the main offence be delayed as a consequence?

27. The CHAIRMAN said that he had just one point to raise: paragraph 86 of the report stated that, as extradition was regarded as a decision of the Government, the Republic of Croatia had adopted the system of the so-called "judicial veto"; the meaning of that expression was not clear and could obscure a reality that was incompatible with article 7 of the Convention.

28. Mr. NAD (Croatia), thanking members of the Committee, said that, at the next meeting, he would endeavour to reply, to the best of his ability, to the questions raised.

29. The CHAIRMAN, thanking the Croatian delegation, said that the Committee awaited its replies with interest.

30. The Croatian delegation withdrew.

The meeting was suspended at 11.50 a.m. and resumed at 11.55 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

31. The CHAIRMAN said that the Committee would have before it at a later meeting document CAT/C/XVI/Misc.2, concerning the obligation on States parties to submit a report. It would also have to consider the letter dated 16 November 1995 received from the Italian representative, forwarding the additional information requested when Italy's report had been considered in April 1995, as well as observations on the Committee's conclusions.

32. Mrs. ILIOPOULOS-STRANGAS said it had been agreed at the previous session that Mr. Gil Lavedra, a member of the Committee at the time, and she herself would prepare a draft reply to the Italian representative. She asked whether she should submit the draft reply to the Committee.

33. The CHAIRMAN said that that would be extremely useful.

34. Mrs. ILIOPOULOS-STRANGAS and Mr. PIKIS said that they had a few specific suggestions to make concerning the Committee's working methods.

35. The CHAIRMAN said he believed that the matter had been mentioned at the informal meeting the Committee had held at the beginning of the session. It would, however, certainly be possible to revert to it at a forthcoming meeting. He reminded the Committee that it should also appoint one of its members to follow the work of the Human Rights Committee and, if necessary, to report back to it, since Mr. El Ibrashi, who was no longer a member of the Committee, had been responsible for that task.

36. Mr. SØRENSEN said that the Committee should also hear the reports of those members who followed the work of other bodies concerned with the protection of human rights. For his own part, he would like to comment on certain aspects of the work of the Committee on the Rights of the Child that were of interest to the Committee against Torture.

37. In answer to a question by Mr. CAMARA, the CHAIRMAN said that the Committee would hear those members wishing to report to it on the work of other bodies at the same time as it appointed one of them to replace Mr. El Ibrashi.

38. Mr. SORETE supported by Mrs. TAVERNIER SORETE said that if any new members showed interest in the work of other bodies concerned in the protection of human rights, entrusting them with the task of ensuring their follow-up would be a good way of associating them effectively and rapidly in the Committee's work.

39. The CHAIRMAN said that that possibility should indeed be envisaged.

The first part (public) of the meeting rose at 12.20 p.m.